

TWENTY-FIVE YEARS AGO[†]

EXCERPTS FROM OUR STATE MEDICAL JOURNAL

Vol. XIII, No. 1, January, 1915

From Some Editorial Notes:

Specials to the American Medical Association, San Francisco, 1915.—A special train to carry the New York and New England members and delegates to the American Medical Association meeting in San Francisco, June 21 to 25, is already planned and reservations are being made. The special is being handled by the McCann agency, in New York, and they have arranged a schedule that will bring their more than welcome trainload of physicians into San Francisco June 20. On the return, this party goes north through Portland, Seattle, etc., and will stop one day at Rochester, Minnesota, for a visit to the Mayo clinic. This is but the first of many special trains that will be made up to bring members from various parts of the country, but we are glad to notice that our friends in New York have begun early to arrange matters so as to be with us this June. Good luck and a pleasant trip to them.

Worth Repetition.—The following quotation from the *Bulletin of the Lake County (Indiana), Medical Society*, touching as it does on a point so often mentioned in these columns, is well worthy of perusal. Doctors are notoriously easy to get into wildcat companies, mines, oil schemes and the like. If they would but ask advice to take counsel, they would save themselves many and many thousands of dollars:

"Has it ever occurred to you as being peculiar that so many stocks are offered to physicians? It hardly seems possible that the salesmen who have various good things to offer should all be philanthropists, and yet, one would gain that opinion after listening to their talk a few moments. The fact is, physicians are generally regarded as 'easy marks' by stock salesmen. We have yet to hear of any of our friends getting in on a good thing through the offers of these salesmen, but know of many cases to the contrary. Give them the 'once over' before listening too intently."

Fractures: Suits: X-Ray Plates.—It has become absolutely necessary for every physician to exercise the utmost caution in treating a case of fracture. A large percentage of suits for alleged malpractice are based upon cases where a fracture has been treated. It is essential that the physician take an x-ray plate of the fracture, preferably both before and after setting, and keep the plate! Failure on the part of the physician to take this simple precaution has cost the Society close upon \$5,000, most of which would have been saved had proper x-ray plates been taken and kept by the attendant. On this account the House of Delegates authorized the Council to make a just rule covering this point in connection with the medical defense work. The Council has ruled that each such suit will be considered separately and on its own merits, but that unless it can be shown by the member sued that it was well nigh impossible for him to have an x-ray taken, he must defend the suit himself and pay for his own carelessness. The basic principle of the rule is sound; it is not fair to permit one careless member to cause a great expense to all the other members. Ninety-nine times in a hundred, it is quite possible to have an x-ray plate made, either before or after setting—or both—and the protection secured is enormous.

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[†]This column strives to mirror the work and aims of colleagues who bore the brunt of Association activities some twenty-five years ago. It is hoped that such presentation will be of interest to both old and new members.

BOARD OF MEDICAL EXAMINERS OF THE STATE OF CALIFORNIA[†]

By CHARLES B. PINKHAM, M. D.
Secretary-Treasurer

News

"Application of Arden Zimmerman, 31, San Jose chiropractor, for probation on a conviction of two counts of slander, will be ruled on by Justice Grandin H. Miller on December 7. Zimmerman was convicted yesterday afternoon of charges preferred by Dr. W. Franklin Morris, Oakland chiropractor, who accused him of telling professional associates that he, Morris, was an abortionist. Zimmerman was acquitted on the third count. Prosecutor A. P. Lindsay, who said Morris would not oppose Zimmerman's probation plea, declared the local man's conviction exonerated Doctor Morris of his assertions." (San Jose News, November 23, 1939.)

"A proposed initiative measure which would make surgeons liable for unnecessary operations was submitted for titling to Ward Sullivan, deputy attorney-general, today by Dr. J. Theo Hollie, Salt Lake City and Los Angeles naturopath. The proposition includes the following: Defines unnecessary operations as those in which no pathology is found to exist, those performed pursuant to a wrong diagnosis and those performed in which no relief could be obtained by the patient. Provides that a written diagnosis must be submitted to the patient by the surgeon prior to the operation and that all excised tissue must be sent by the surgeon to the state department of public health, along with a copy of the surgeon's record of the case, within five days after the operation. States that the health department must make tests of the tissue and give the patient a copy of the report, and that the department must retain the tissue for 300 days. Provides that all prescriptions written by doctors must bear English interpretation of the symbols or names in another language. Would make hospitals liable for an unnecessary operation to the extent of \$500 damages and a surgeon convicted of violation of the act subject to a \$500 fine, six months in jail and suspension of license for from six months to two years. Doctor Hollie last week submitted to the attorney-general's office for filing another proposed initiative aimed at the separation of nonmedical practitioners from the State Board of Medical Examiners and the creation of a nonmedical board." (Associated Press dispatch dated San Francisco, November 30, printed Sacramento Bee same date.) (Previous entries, December 1937; March, 1938.)

"A demurrer against the recently voted indictment charging Dr. Nathan S. Housman on six counts of perjury, offering false evidence and preparing false evidence, was filed before Superior Judge Lile T. Jacks yesterday by the physician's attorneys, John J. Taaffe and William Ferriter. The attorneys contended the charges did not involve a public offense. The case was set for November 30. . . ." (San Francisco Chronicle, November 25, 1939.) (Previous entries, November, December, 1932; July, 1933; January, 1937; January, November, 1938; October, December, 1939.)

"The right of osteopaths to be employed by school districts throughout California has been affirmed by the third district court of appeal. . . . The appeal court decision, announced yesterday, upholds a Sacramento superior court (Continued in Back Advertising Section, Page 34)

[†]The office addresses of the California State Board of Medical Examiners are printed in the roster on advertising page 6.



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Wilson, Charles H., D. C.

See Abortions

Sentenced to one year in jail and five years' probation (November), Adv. p. 45

Wilson, Emmet, Superior Judge

Issues Writ of Mandate ordering Board to restore medical license of Harry W. Boyd, M. D. (December), Adv. p. 34

Woodruff, W. P., M. D.

See Narcotic Violators (September), Adv. p. 40
 Found guilty by Board; penalty deferred (December), p. 414

Wyatt, Thomas D., M. D.

See Abortions

Certificate revoked—two charges, October 19, 1939 (December), p. 414

Young, Frank W., M. D.

Arrested in Beverly Hills on bad check charge (July), Adv. p. 30

Zimmerman, Arden, D. C.

Charged by W. F. Morris, D. C., with slander (December), Adv. p. 38

Zoffel, Frances

Prosecution petition for rehearing denied (December), Adv. p. 36

TWENTY-FIVE YEARS AGO

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The Council wishes and intends to be absolutely fair to all in its administration of the heavy burden placed upon it by the Society in the guidance of this medical defense work, but in doing so it does not wish to permit any member, through his own fault, to be an expensive burden to the whole Society.

Always have an x-ray taken of your fracture cases—and keep the plate; do not give it to the patient.

1 1 1

Important Notice! New Medical Defense Rules.—That the number of suits for damages for alleged malpractice has very greatly increased in the last two years and that it is increasing, are facts that have been frequently com-

mented on in the JOURNAL and in the reports of the officers at the annual meetings. The Council of the State Society has employed the best attorneys that money can secure, and in formulating its rules and in handling cases, nothing is done without the advice of our attorneys. And this is for the purpose of securing the greatest good and benefit to all the members of the Society. . . .

1. *Be sure that your dues are paid to the secretary of your county medical society before the end of February. . . .*

2. The Council has ruled, on the advice of our attorneys, that if a member who has insurance in some insurance company giving him protection against damage suits is sued, he must at once *elect whether the insurance company is to undertake his legal defense or the Society. . . .*

3. *Do not sue within a year.* A most important rule was made by the Council at its December meeting; and this, too, on the very emphatic recommendation of our attorneys. . . .

. . . The Council has therefore ruled that the Society will not defend such suits, except in this case: If a member has such an outstanding bill and wishes to sue to collect, he must submit the whole matter to the Council, and if the Council considers that the facts warrant him in suing, in spite of the chance of a counter suit, he may then do so. If you turn your accounts over to a collector, instruct him not to bring any suits within a year. This is imperative and must not be overlooked. It is not fair to the other members of the Society to take hundreds of dollars out of the treasury—for no good reason.

From an Original Article on "Expert Witness From the Standpoint of the Attorney," by Oscar C. Mueller.—The present status of expert testimony is unquestionably a dis-

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(Continued from Preceding Page)

grace to all the professions, and we should free them from this stigma, and have California pioneer remedial legislation.

"Believe no expert," says the cynic Bar,
Yet how unjust—all alike deride.

This swears white black; but straightway haud impar,
An equal sage approves the candid side."

As long ago as 1874, Professor John Ordranax declared:

"There is a growing tendency to look with distrust upon every form of skilled testimony. Fatal exhibitions of scientific inaccuracy and self-contradiction cannot but weaken public confidence in the value of all such evidence. Some remedy is called for both in the interest of humanity and justice."

Forty years have elapsed with no remedy.

An expert witness should always be qualified either by professional, scientific or technical training, or by practical experience in some field of human activity, conferring on him an especial knowledge not shared by men in general. The question of the competency of an expert has frequently been before the courts. We have a code provision in California, Section 1870 of the Code of Civil Procedure, Subdivision 9, which provides that the opinion of a witness may be given on "question of science, art or trade when he is skilled therein"—and there we end. . . .

By making experts the appointees of the court, and their compensation not only sure but independent of the effect of their testimony, a prominent cause of bias would be eliminated.

Dr. Andrew S. Lobingier, acting for the Los Angeles County Medical Society, and for Oscar C. Mueller, as

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chairman of the Bar Association of the same county, prepared an act to regulate medical expert testimony and submitted the same to the legislature of 1911. The act passed in the Senate, but no one urged its adoption by the Assembly. Last year Honorable Frank F. Oster, judge of the Superior Court of San Bernardino County, and Doctor Lobingier and myself met and discussed the framing of a measure so that same would cover all experts. We were joined by Mr. Derleth of the Pacific Coast Consulting Engineers' Association. The bill I am about to read was mainly written by Judge Oster, and while the Los Angeles County Medical Society, the Committee on Amendment of Laws of the Los Angeles Bar Association, and Judge J. Perry Wood, chairman of a committee of the bench of Los Angeles County appointed to examine this bill, made a few suggestions, it is practically the same as originally drawn.

Of course, the two principal reasons for the selection of the expert by the county are:

First, That we would obtain impartial testimony, and there would be no object in prejudicing the case in favor of any litigant; and

Secondly, A better class of experts would appear in our courts because the judge would seek to have the ablest physician or engineer or handwriting expert appear, for the purpose of giving testimony. Draft of the Proposed Act follows: . . .

From an Original Article on "Official Medical Experts," by Roscoe S. Gray, San Francisco.—(a) The Sociological Relationships of the Problem.

Of course it is understood that the phrase, "Official Medical Experts," refers to such "experts" as instrumen-

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talities (whether as witnesses or otherwise) in the judicial determination of controversies.

The fact that the American Medical Association, as the result of three years' consideration of the questions relating to expert medical testimony, reached in June, 1914, the conclusions shown at pages 100 and 110 of the Sixty-third volume of the *Journal* of that Association, justifies the proposition that in the recommended conferences between the medical and legal associations, careful consideration should be given to the sociological relationships involved. . .

From an Original Article on "Official Medical Experts," by William M. Cannon, San Francisco.—The activities of the so-called three learned professions, religion, medicine and law, carry them along lines which are usually quite distinct. Occasionally, however, their functions to some extent merge or blend with one another. . .

From an Original Article on "The Medical Expert in American Jurisprudence," by Andrew Stewart Lobingier, M. D., Los Angeles.—There has been a growing sentiment in American courts of justice that the testimony of the expert witness must be received with a conscious discount and reserve. It is widely accepted that the abuses which attend the offering of expert testimony are many and flagrant. But it is equally obvious that these abuses are as clearly the outgrowth of the present method of procedure as they are of the mental obliquity of the witnesses who are called. For more than a generation the testimony of the medical expert has been a purchasable commodity.

From a factor whose learning and experience should prove a distinct assistance to the court in determining the adjudication of technical difficulties, the medical expert has, by virtue of the false position he has been brought to occupy, become an object of ridicule and contempt. . .

From an Original Article on "The Cure of Syphilis," by Harry E. Alderson, M. D., San Francisco.—It is not the purpose of this paper to present a startling new remedy for syphilis, nor to report any spectacular results of treatment. Its object is rather to emphasize the fact that the treatment of the disease, as carried on in a deplorably large percentage of the cases, has been utterly inefficient. . .

From an Original Article on "Progress in Obstetrics," by Arthur H. Morse, M. D., San Francisco.—During the past year progress in obstetrics, at least as far as the more practical aspects of the subject are concerned, has been marked, not by the introduction of new methods, but by the settlement of disputed therapeutic questions. Naturally, in the presence of many complications the procedure of choice remains the subject of honest difference of opinion. Good authority is not unanimous, for example, regarding the proper treatment of placenta previa; and, also, equally competent men oppose each other in the discussion of the treatment of albuminuria during pregnancy. On the other hand, the uniform experience of large clinics in the investigation of a number of practical problems enables us to adopt with confidence measures that heretofore were really in the experimental stage. No better example of this can be cited than the use of the extract of pituitary gland at the time of labor. . .

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From an Original Article on "The Relation of the Periosteum to Bone Vitality," by R. T. Stratton, M. D., Oakland.—Notwithstanding the mass of clinical experience tending to establish the function of the periosteum in its relation not only to bone production but also to the maintenance of the vitality of the bone, there is still much misunderstanding or variance of opinion on both of these points. Whether it has positive and active osteogenic properties, as has long been held and is still strongly maintained, or whether it has no higher function than to serve as a supporting and limiting membrane, will not now be considered. It is the purpose of this paper, rather, to discuss how much the periosteum has to do with sustaining the life of bone. The decisive bearing of this upon prognosis and treatment of osseous lesions is evident. . . .

From an Original Article on "Nutritional Disturbances of Infancy," by George D. Lyman, M. D., San Francisco.—

The German school of pediatrics, headed by such men as Finkelstein, Czerny and Myer look upon infantile intestinal disturbances somewhat differently from what we do. We are apt to put an emphasis on bacteriological findings. The Germans emphasize errors in feeding. Every infant, according to this idea, has a certain amount of tolerance for the fat and carbohydrate of cow's milk. When this tolerance is overstepped, and has been abused over a considerable length of time from a formula too high in fat or carbohydrate, the infant reacts with a nutritional disturbance. Finkelstein has invented a terminology for these several conditions, which has been generally adopted in Germany and Austria, and which we wish to present here. An abuse of the tolerance for fat results in a "balance"

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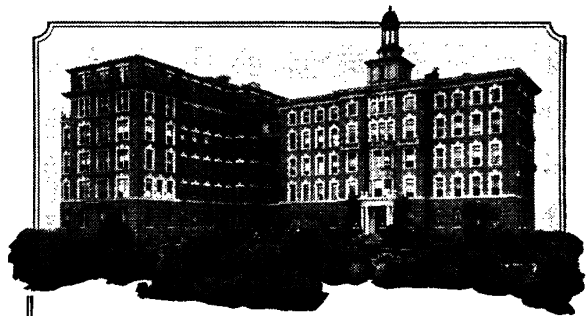
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disturbance. When the tolerance for carbohydrate has been abused, dyspepsia results; decomposition, when both carbohydrate and fat tolerance have been abused, and intoxication is an extreme intolerance for carbohydrate. . . .

BOARD OF MEDICAL EXAMINERS

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decision granting a writ of mandate to Edward William Jordt, Sacramento osteopath, against the school board directing the board to issue the credential permitting his employment in schools. The school board refused to recognize the state board of osteopathic examiners licenses, since it supplanted the medical board in 1922 for osteopathic physicians." (Sacramento *Bee*, November 25, 1939.)

"Dewey Conway, 49, of Chico, was arrested today on a ranch near Clovis on charges of practicing medicine without a license. He was held in the Fresno County jail in lieu of \$5,000 bond. Conway denied the charge, declaring he was operating as an herb specialist. 'Our investigation,' said Williams, 'shows that Conway has been treating from 150 to 200 San Joaquin Valley residents two or three days each month at a charge of \$5.50 a patient, for such ailments as brain tumor, venereal diseases, stomach and kidney diseases, and cancer. Records in his office show he gave the identical prescription to each patient, no matter what their ailment, the medicines containing aspirin, caffeine, and hypnotic drug, and other ingredients intended to alleviate pain.'" (Associated Press dispatch dated Fresno, November 17, printed San Bernardino *Telegram* same date.) (Previous entry, May, 1932.)

"Isaiah Conway, 45, brother of Dewey Conway, local 'Indian herb doctor' arrested here October 6 on (practicing) without a license and now at liberty on \$250 cash bail, was arrested last night in Sacramento for violation of the state medical practice act and today was in the county jail at Sacramento, according to news dispatches from the state capital. Conway was formerly of Chico and was arrested here on a similar charge prior to moving to Sacramento. The arrest was made by Joseph W. Williams, special agent for the State Board of Medical Examiners, who arrested the offender's brother here recently." (Chico *Enterprise*, November 3, 1939.)

"Punch drunk Los Angeles today staggered under the impact of a new scandal—a narcotic ring assertedly involving state narcotic officers, police and physicians. First inkling of the newest scandal, which takes its place in the sun with the liquor and grand jury pay-off investigations, was the resignation of Jack Harrigan, inspector of the state narcotic division in Los Angeles, since 1932. Harrigan's resignation followed a conference with Paul E. Madden, state chief of the division. 'After talking with numerous addicts and suspected addicts, I talked with Harrigan,' Madden said. 'Following this conversation, he submitted his resignation.' Putting the finger on the newest scandal was an addict, Tony Chrisman, former police undercover man, who said he felt he was 'being roused by the narcotic cops.' Some of the addicts questioned said it was a case of a radio for the doctor and liquor for the cop, instead of an apple for the teacher. . . . So far there has been no actual evidence linking members of the police department, sheriff's office or the three other state narcotic officers here, Madden said. Both Madden and Homer Cross, deputy chief of police, said the statements of addicts must

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